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EXAMINER

KLINGER, SCOTT M

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/748,057

Applicant(s)

ELLIOTT, BRIG BARNUM

Examiner

Scott M. Klinger

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 7-13 and 15-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-13 and 15-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

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### **DETAILED ACTION**

Claims 1-4, 7-13, and 15-26 are pending.

#### ***Response to Applicant***

Applicant's arguments with respect to claims 1-4, 7-13, and 15-26 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 18 recites in part: *"the play list identifying content for streaming delivery to a network receiver associated with a specific user"*. Therefore all of the content in the play list is content destined for delivery to a specific user. Claim 20 depends on claim 18, and recites in part *"the play list includes at least one reference to content not designated for delivery to a specific user"*. If a play list is, by definition, a list of content designated to a specific user, it is unclear as to how it could contain an item that is not.

#### ***Claim Rejections - 35 USC § 101***

Claims 24-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Non-statutory subject matter includes intangible media such as signals, carrier waves, transmissions, optical waves, transmission media or other media incapable of being touched or perceived absent the tangible medium through which they are conveyed. Claim 14 recites in part: *"a graphical interface for..."*.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 7-10, 15-19, and 21-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Gupta et al. (U.S. Patent Number 6,484,156, hereinafter “Gupta”). Gupta discloses accessing annotations across multiple target media streams. Gupta shows,

In referring to claim 1,

- Providing remote network node interface instructions for submitting remote network node content; transmitting the remote network node interface instructions to a remote network node; receiving a request from the remote network node, via the transmitted interface instructions to modify a play list, the request including remote network node content information of a user, the play list being associated with the user identified by the identification information:

*“Additionally, according to one embodiment the collection of media segments identified by the playlist can be stored as an additional media stream by selecting “save playlist” button 414 of FIG. 11. By saving the collection of media segments as a single media stream, the collection can be retrieved by the user (or other users) at a later time without having to go through another querying process. Furthermore, the collection of segments, stored as a media stream, can itself be annotated.”* (Gupta, col. 18, lines 14-21)

- Modifying the play list associated with the user identified in the information to include a reference to the remote network content, the play list identifying content for streaming delivery to a network receiver associated with the identified user:

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Gupta, Fig. 11 shows the play list can be modified 410

- Causing streaming of the remote network node content to the network receiver associated with the identified user as part of the content for streaming delivery based on the modified play list:

*“Transfer of the corresponding media segments (and/or the annotations) to client 15 is initiated when a “start” button 412 is selected.”* (Gupta, col. 17, lines 19-21)

In referring to claim 2,

- The remote network node content comprises at least one of audio data and video data:

*“For audio content, for example, a dynamically changing frequency wave that represents an audio signal is displayed in media screen 456.”* (Gupta, col. 18, lines 50-53)

In referring to claim 7,

- The play list identifies generic, shared content in addition to the remote network node content:

Gupta, Fig. 11 shows a list of generic shared content

In referring to claims 8 and 21,

- Determining whether the remote network node is authorized by the user to submit content:

*“An annotation server uses a hierarchical annotation storage structure to maintain a correspondence between the annotations and a hierarchically higher group identifier. Thus, annotations corresponding to the different multimedia streams can easily be accessed concurrently by using the group identifier.”* (Gupta, col. 2, lines 35-40)

In referring to claims 9 and 22,

- Receiving play scheduling information for the content based on the interface instructions; modifying the play list based on the received play scheduling information:

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*"... By saving the collection of media segments as a single media stream, the collection can be retrieved by the user (or other users) at a later time without having to go through another querying process. Furthermore, the collection of segments, stored as a media stream, can itself be annotated."* (Gupta, col. 18, lines 14-21); when a user logs on he/she can retrieve a play list, play lists contain play scheduling information

In referring to claim 10,

- Receiving play scheduling information comprises receiving a number of times to stream the remote network node content:

The number of times an annotation appears on the play list is the number of times said annotation will be streamed

In referring to claims 15, 18, and 23,

- Play lists associated with different respective users, the play lists identifying content for streaming delivery to network receivers associated with the respective users:

Gupta, Fig. 11 shows that each annotation has a user associated with it **406**

- Instructions for causing a processor to receive a request from a remote network node to modify at least one play list of the play lists, the request including received content and identification of one user of the different respective users, the one play list being associated with the one user:

*Gupta, col. 18, lines 14-21* (see full quote above)

- Instructions for causing a processor to modify the one play list associated with the one user to include a reference to the received content:

Gupta, Fig. 11 shows the play list can be modified **410**

In referring to claims 16 and 19,

- A stream generator for streaming content to the one user based on the play list associated with one user.

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Gupta Fig. 3 shows a streaming media server 11, a stream generator is inherent in a system that generates a stream

In referring to claim 17,

- Causing a processor to transmit interface instructions to the remote network node, the interface instructions for receiving identification of content designated by a content submitter and transmitting the identification to the network server:

*Gupta, col. 18, lines 14-21 (see full quote above)*

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta in view of Bowman-Amuah (U.S. Patent Number 6,606,660, hereinafter "Bowman-Amuah").

In referring to claim 2, although Gupta shows substantial features of the claimed invention, Gupta does not show the content comprises video data. Nonetheless this feature is well known in the art and would have been an obvious modification to the system disclosed by Gupta as evidenced by Bowman-Amuah.

In analogous art, Bowman-Amuah discloses stream-based communication in a communication services patterns environment. Bowman-Amuah shows:

- Causing streaming of the content to a network receiver associated with the identified user:

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*"FIG. 20 depicts Streaming, in which a real-time data stream is transferred"* (Bowman-Amuah, col. 3, lines 18-19)

- The content comprises at least one of audio data and video data:

*"Audio/Video services allow nodes to interact with multimedia data streams. These services may be implemented as audio-only, video-only, or combined audio/video"* (Bowman-Amuah, col. 62, lines 7-9)

Given these teachings, a person of ordinary skill in the art would have readily recognized the desirability and advantages of modifying the system of Gupta so as to allow the system to provide video data, such as taught by Bowman-Amuah, in order to entice more users to use the system by providing more robust content.

In referring to claims 3 and 4, Gupta in view of Bowman-Amuah shows,

- The audio data comprises a voice mail message:

*"... an Internet telephony product can accept voice input into a workstation, translate it into an IP data stream, and route it through the Internet to a destination workstation, where the data is translated back into audio. Desktop Voice Mail--Various products enable users to manage voice mail messages using a desktop computer."* (Bowman-Amuah, col. 60, lines 22-29)

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Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta in view of Pezzillo et al. (U.S. Patent Number 6,434,621, hereinafter "Pezzillo").

In referring to claim 11, although Gupta shows substantial features of the claimed invention, Gupta does not show receiving play scheduling information comprises receiving a specified time to stream the remote network node content. Nonetheless this feature is well known in the art and would have been an obvious modification to the system disclosed by Gupta as evidenced by Pezzillo.



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In analogous art, Pezzillo discloses an apparatus and method of using the same for Internet and intranet broadcast channel creation and management. Pezzillo shows receiving play scheduling information comprises receiving a specified time to stream the remote network node content: *"A further aspect of the invention is to utilize time barriers to override a webcast channel's program schedule to force program files to run at particular times."* (Pezzillo, col. 3, lines 24-26)

Given these teachings, a person of ordinary skill in the art would have readily recognized the desirability and advantages of modifying the system of Gupta so as to include a time in the schedule, such as taught by Pezzillo, in order to provide live broadcasts.

In referring to claims 12 and 13,

- Receiving play scheduling information comprises receiving a priority for streaming the content; based on the received priority of the streaming the remote network node content, terminating streaming of currently streaming content and initiating streaming of the remote network node content

*"A still further aspect of the invention is to utilize live barriers to override a webcast channel's program schedule to force a live events to broadcast at a particular times."*  
(Pezzillo, col. 3, lines 27-29)

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Claims 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pezzillo et al. (U.S. Patent Number 6,434,621, hereinafter "Pezzillo"). Pezzillo discloses an apparatus and method of using the same for Internet and intranet broadcast channel creation and management.

In referring to claim 24, Pezzillo shows substantial features of the claimed invention, including:

- Receive input identifying content; form a request at the remote network node to modify a play list to include the identified content; transmitting the request, the input identifying content to a network server.

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*“The user interface to the system is a standard Web browser, such as Netscape Navigator or Microsoft® Internet Explorer. The current system will run under the Windows NT™ or UNIX®/Linux operating systems. The listener accesses the stations from a computer utilizing a standard Web browser and loaded with player software that can handle the streaming media formats.”* (Pezzillo, col. 3, line 67 – col. 4, line 6)

*“Referring now to FIG. 12, the program to generate the graphical user interface that displays the program schedule as depicted in FIG. 3 is called in step 1200.”* (Pezzillo, col. 17, lines 53-56)

However, Pezzillo does not explicitly show that a specific user is identified while modifying the playlist. Nonetheless this feature is well known in the art and would have been an obvious modification to the system disclosed by Pezzillo.

Pezzillo shows that play lists can be modified to be targeted at specific demographics: *“The PlayList tool in Station Manager allows multiple media files to be aggregated into single programs to create unique and targeted programs for insertion into a broadcast schedule.”* (Pezzillo, col. 1, line 66 – col. 2, line 2)

Given these teachings, a person of ordinary skill in the art would have readily recognized the desirability and advantages of modifying the system of Pezzillo so as to allow for specifying one or more users for a specific playlist, in order to provide targeted advertisements and programs.

In referring to claim 25,

- Causing a processor to receive input from the remote network node identifying play scheduling information for the identified content.

*“If step 1312 determines that there are no more shows in the list of shows, then in step 1314 the graphic user interface is updated to display the list of compliant shows. Control then returns to the add an entry program, where the user can now select a compliant show from the list of compliant shows to add to the program schedule.”* (Pezzillo, col. 18, lines 44-49)

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In referring to claim 26,

- A graphical interface defined by markup language instructions:

*"Selecting HTML tools button 608 gives the user access to a HTML module for synchronizing HTML with the audio. Selecting playlists button 610 gives the user access to the playlist system, which gives the contents of the show now playing, and manages the music library and integrates compliance checking."* (Pezzillo, col. 12, lines 43-48)

### **Conclusion**


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Klinger whose telephone number is (571) 272-3955. The examiner can normally be reached on M-F 9:00am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Burgess can be reached on (571) 272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Scott M. Klinger  
Examiner  
Art Unit 2153

smk

  
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